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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the third periodic reports of Tunisia

Addendum

Information received from Tunisia on follow-up to concluding observations*

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* The present document is being issued without formal editing.

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Reply to the recommendations issued by the Committee against Torture in response to the third periodic report of Tunisia on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The Government of Tunisia acknowledges the recommendations issued by the Committee against Torture on 10 June 2016 in its concluding observations on the third periodic report of Tunisia, which it discussed at its 1398th and 1401st sessions held on 19 and 21 April 2016. The Committee requested the Government of Tunisia to submit, by 13 May 2017, its response to the recommendations contained in paragraph 16 on allegations of torture and ill-treatment, paragraph 28 on conditions of detention and paragraph 38 on the Truth and Dignity Commission.

2. The Government of Tunisia submits the following responses to the recommendations of the Committee:

First: Recommendation of the Committee concerning allegations of torture and ill-treatment (paragraph 16 of the concluding observations)

3. The Public Prosecutor exercises direct oversight over all activities of the judicial police, in accordance with article 13 bis of the Criminal Procedure Code, as amended by Act No. 2016-5 of 16 February 2016, pursuant to which a person may be detained or have their detention extended only where written permission has been obtained from the Public Prosecutor. Before the entry into force of Act No. 2016-5 on 1 June 2016, the Ministry of Justice and the Ministry of the Interior organized a series of meetings between the Public Prosecutor, law enforcement officials of the public security services and the National Guard with a view to improving the implementation of the Act and identifying practical solutions to the obstacles to its implementation. The Public Prosecutor continues to exercise strict oversight over all cases in which the detention of a person is extended. Detention cannot be extended automatically; rather, written permission must be obtained from the Public Prosecutor, who must first listen to the suspects' statements in person and consider the likelihood that they will be taken back into custody. This ensures that any suspected cases of torture are investigated promptly by the Prosecutor. In no case may detention last for more than 48 hours, extendible for a further 24 hours in the case of misdemeanours and 48 hours in the case of felonies.

4. The investigating judge is responsible for overseeing all activities that he or she has authorized the judicial police to perform, in accordance with the new article 57 of the Criminal Procedure Code as amended by Act No. 2016-5. In such cases, the police officers are not permitted to overstep the mandate granted to them in writing by the judge.

5. The Government is taking all possible steps to install video surveillance equipment in interrogation centres and places of custody. Video surveillance equipment has been installed at six model centres in cooperation with the United Nations Development Programme (UNDP), as referred to in paragraph 168 of the third periodic report of Tunisia, and at detention centres in Gorjani, El Aouina and Bouchocha. The Government hopes that the experience gained at those centres may be progressively introduced into other interrogation centres and places of custody throughout the country. Judges can access the recordings upon request.

6. On 16 May 2016, the Government convened a press conference at the office of the Head of the Government, at which the minister responsible for liaisons with constitutional authorities and civil society and for human rights issues, who acted as head of the Tunisian delegation to the Committee against Torture during the discussions on the country's third periodic report, presented the recommendations of the Committee.

7. Upon receiving the delegation involved in the discussions on the report, the Head of the Government reaffirmed the commitment of Tunisia to combatting all forms of torture and ill-treatment.

8. A national consultation was held with civil society on 19 May 2016, as a result of which a number of legislative, institutional and procedural propositions were produced. These will be taken into account when drawing up the action plan for implementing the recommendations of the Committee.

9. Article 67 of Basic Law No. 2015-26 of 7 August 2015 on combating terrorism and money-laundering sets out provisions for the composition of the National Committee on Combating Terrorism. It may in no way be misinterpreted as guaranteeing impunity for officers of the security services suspected of committing acts of torture or ill-treatment.

10. The Government has introduced legislative and administrative measures to prevent impunity among law-enforcement and anti-terrorism officials suspected of committing acts of torture or ill-treatment. To that end, the Tunisian control mechanisms are working with the UNDP, under the guidance of a steering committee, to develop a reference framework for the new ministerial policy of the Ministry of the Interior on oversight, investigations and inquests and on the system for receiving complaints and petitions from citizens, which meets international standards of good governance.

11. The Ministry of the Interior, through its control mechanisms, takes all appropriate disciplinary measures in response to cases of torture or ill-treatment. All cases involving potential criminal liability are referred to the Public Prosecutor so that the necessary judicial measures may be taken, in accordance with the Criminal Code. This does not prejudice the right of the complainant to have direct recourse to the judiciary, including in order to drop the case.

12. Failure to report an incidence of torture is considered a crime in accordance with paragraph 101 bis of the Criminal Code.

13. To date, 18 investigations have been opened into acts of torture committed by anti-terrorism officers, of which three were launched based on reports submitted by the Public Prosecutor or the investigating judge. All investigations are currently ongoing.

14. As part of its commitment to education in human rights, quality and professional responsibility, the Ministry of the Interior provides human rights training to members of the internal security forces in line with international standards, in order to ensure that its employees are qualified in the field of human rights in accordance with United Nations guidance, the international treaties ratified by Tunisia and domestic legislation, which includes provision for the protection of fundamental human rights and freedoms. The training is conducted by national and international academic experts, who are provided through the international cooperation mechanisms set up with, among others, the Council of Europe, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Committee of the Red Cross (ICRC) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF). The Government is also taking steps to develop schools for members of the National Guard and the National Police and to build police academies.

15. The Government is preparing a number of bills with the aim of reforming the security sector:

1. **A bill to amend the basic general law for the internal security forces**: It contains provisions on discipline and on respect for the supremacy of the law and human rights, in line with the principles underlying the work of the security forces as set out in article 19 of the Constitution. This will necessitate an in-depth review of the functions and composition of the internal security forces to ensure that they meet the requirements of democratic law.

2. **A bill on peaceful assembly**: This is intended to amend **Act No. 1969-04 on public gatherings, demonstrations, processions and parades** as many of the provisions contained therein do not meet the relevant international standards. The Ministry of the Interior has issued binding operations memoranda to suspend, until the passage of the new bill, the application of all principles and provisions in the law that allow for the use of firearms but do not meet international standards.

3. **A bill regulating conditions for the use of force by the armed forces during operations to maintain the peace, combat terrorism and intervene in situations of emergency or natural disaster**: The bill is designed to preserve the balance between, on the one hand, the stability of the State and the protection of national territory and, on the other, the need to protect human rights and freedoms as

provided for under article 49 of the Constitution. The bill is currently being studied by the relevant ministries, under the supervision of the Presidency of the Government.

4. **A bill on preventing attacks on the armed forces**: This is intended to provide the necessary protection to security personnel who are subject to threats and attacks, including attacks against their families and property. The bill makes specific provision for the Government to provide a comprehensive system of compensation for victims of such attacks, in particular given that the current system of protection is no longer sufficient to shield security officers from the risk of terrorist attacks.

5. **A draft governmental decree on the Code of Conduct for internal security forces under the purview of the Ministry of the Interior**: The aim of this is to set out rules for professional behaviour and best practice to be observed by the security sector in order to ensure that the law is upheld within the professional sphere and that the proper respect is granted to human rights and freedoms, in line with the law. A specially assembled working group is currently in the process of preparing the draft.

6. A draft governmental order is also being prepared to establish a human rights department in the Ministry of the Interior.

Second: Recommendation of the Committee concerning conditions of detention (paragraph 28 of the concluding observations)

(a) Reducing overcrowding in prisons by making more use of alternatives to incarceration

Alternatives to incarceration

16. Despite the fact that, since 2009, unpaid community service and the application of punitive damages have been available for use as alternatives to incarceration, in accordance with articles 15 bis and 15 quater of the Criminal Code, they are not frequently applied in criminal cases.

17. The Ministry of Justice has taken steps to increase awareness among judges of the importance of using those sanctions, in particular through the provision of continuous professional development courses. In March 2016, for example, a training course was held on alternative sanctions provided for in the Criminal Code.

18. A joint initiative has been launched by the Ministry of Justice and ICRC to establish a model office affiliated to the Court of First Instance in Sousse. Since 2013, the office has been providing training to judges on the selection of appropriate sanctions based on the nature of the offence and on the individual circumstances of the offender, in addition to training on the effectiveness of community service in practice and its contribution to reducing prison overcrowding. This has helped to decrease overcrowding at Messaadine prison by around 25 per cent and to reduce recidivism among persons sentenced to community service.

19. On 17 May 2016, the Ministry of Justice approved a two-year project to increase the use of alternative sentences at Messaadine prison.

Pardon and conditional release

20. The President of Tunisia has the power to pardon offenders; in accordance with article 371 of the Criminal Procedure Code, the President may choose to lift the sanction placed on an offender, reduce the duration of the sanction or replace it with a less severe sanction as provided for by the law. Pardons are granted in a transparent manner. Recipients must have demonstrated good behaviour and must not have committed a serious offence.

21. Offenders may be granted conditional release if they have served part of their sentence and have shown themselves to be repentant during their time in prison, or if their release would be beneficial to society, in accordance with articles 353 and 354 of the Criminal Procedure Code. Conditional release may be granted by the Minister of Justice or the sentencing judge, as appropriate.

22. Pardons and conditional release provide a fundamental solution to prison overcrowding. As a result, a clear reduction has been achieved in the number of individuals held in Tunisian prisons, as shown in the following table.

Year	*Judicial conditional release*	*Conditional release*	*Presidential pardon*	*Total*
2012	3292	7636	9619	20547
2013	4440	6720	4764	15924
2014	3969	4889	4795	13653
2015	4619	2713	6951	14283
2016	3928	4364	5800	14092
2017 (until end March)	1731		5239	6970

23. The proportion of offenders serving time for drugs offences is high, equivalent to more than 28 per cent (6,662 detainees out of a total of 23,553), owing to the fact that the current law on drugs imposes a sanction of one year of imprisonment for all persons found guilty of using drugs, regardless of their age or social status. To solve this, the Government has presented a bill before the Assembly of the Representatives of the People under which criminal proceedings for drug use would not be brought against any person who, personally or through a representative, spouse, family member or physician, has asked to be placed on a personal treatment programme for health reasons and has not stopped that treatment or left the medical facility without permission from the treating physician. The bill proposes a radical overhaul of the current law, most notably through the proposed adoption of a medical treatment approach to drug use, rather than merely a punitive approach. Given that the process of approving the bill could take a long time, the Assembly of the Representatives of the People voted, based on a Government initiative, to approve Act No. 2017-39 of 8 May 2017 amending article 12 of the current law. As a result, judges may take account of the attenuating circumstances provided for in article 53 of the Criminal Code when handing down sentences for drug use and may, accordingly, issue prison sentences of less than a year or even suspended sentences. The aim of the amendment is to reduce the number of persons held in prisons for drug-related offences.

24. Steps are also being taken to amend the sanctions provided for in the Criminal Code, in particular prison sentences.

25. In addition, a small technical committee has been established as part of the Ministry of Justice to develop mechanisms to encourage the use of existing alternative sentences and to introduce new alternative measures.

(b) Ensuring absolute compliance with the maximum length of pretrial detention and ensuring that persons in detention are brought to trial without excessive delay

26. According to data from 30 December 2016, almost 50 per cent of all detainees in Tunisia have been detained without sentence (11,753 out of 23,553). In the light of this fact, the Ministry of Justice is taking steps to revise the pretrial detention measures provided for in the Criminal Procedure Code. Efforts are currently focused on finding alternatives to pretrial detention, such as judicial probation and electronic tagging, which are helping to significantly reduce the reliance on pretrial detention.

27. Investigating judges in Tunisia are careful to respect the maximum duration of pretrial detention. They make efforts not to exceed that duration by concluding their investigations within a reasonable time frame and by releasing detainees if the maximum period of pretrial detention set down by the law is exceeded.

28. Furthermore, in line with the Constitution, steps are being taken to revise the provisions of the Criminal Procedure Code to shorten the time frame for investigations and to provide additional guarantees that all suspects will receive a fair trial, including with regard to reasonable time limits and the presumption of innocence.

(c) Continuing efforts to improve conditions at prison facilities in line with international standards and to strengthen reintegration and rehabilitation activities

29. In February 2015, the Ministry of Justice held a symposium, in collaboration with OHCHR and Penal Reform International (PRI), on developing a national strategy to eliminate overcrowding in Tunisian prisons and to bring them into line with international standards. The following steps have been taken based on the recommendations proposed during the symposium:

- Extensive efforts are being made to increase capacity and to renovate cells and wings at a number of prisons:
    - Additional capacity was created at Sfax, Mahdia and Messaadine prisons (stage 1) and at Monastir prison (stage 1) for 1,480 prisoners in January and March 2017.
    - Additional capacity is to be created at Gabès and Burj Al-Amiri prisons for 1,076 prisoners by June 2017.
    - Four cells are to be built at Sfax prison; work on the project is 95 per cent complete and is expected to be finished by June 2017.
- Between September 2016 and March 2017, work was carried out to adapt a number of prisons, renovate the facilities available to officers, expand the medical facilities, install kitchens and build training facilities. Among other things, the project involved re-roofing the visitor's lounge and central workshop at Mornaguia prison, the renovation and expansion of the medical facilities at Burj Al-Amiri prison, the installation of a new fire suppression system in the new wing of Monastir prison and the installation of a police canine unit and a water storage tank for the fire suppression system at Mahdia prison, in addition to works to connect Gabès prison to the public sanitation network.
- Several projects are under way to renovate certain prisons and build new prisons, such as:
    - The construction of a prison in Bali district with capacity for 1,000 prisoners, which is expected to be completed by May 2020.
    - The construction of a new prison in Béja, which is expected to be completed by 2020.
    - The renovation of Burj Al-Roumi prison to create capacity for an additional 1,000 prisoners, which is expected to be completed by 2021.
    - The construction of new wings at Mornag prison to create capacity for an additional 500 beds.
- With regard to reintegration and rehabilitation activities, efforts have been made to implement the partnership agreement between Tunisia and the United Nations Office on Drugs and Crime (UNODC) intended to improve prevention, awareness-raising and treatment services for drug abuse and for sexually transmitted and blood-borne diseases at prisons and to enhance the rehabilitation and reintegration of prisoners.

(d) Putting in place the measures required to ensure the strict separation of accused persons from convicts and adults from minors

30. In the Tunisian prison system, adult and minor convicts are detained separately: adults in prisons and minors in correctional facilities. Nonetheless, in some exceptional circumstances provided for by the Child Protection Act, certain minors may be held in prisons, although they are still strictly separated from adults. As of December 2016, the number of minors held in prison accounted for 3.8 per cent of all detainees.

31. Work is being carried out to improve prison facilities for the separation of convicts and accused persons, taking account of the relevant aspects of the juvenile justice system and the applicable human rights standards.

32. A number of preventive steps are being taken with regard to perpetrators of terrorist offences, in particular concerning the classification and management of this type of prisoner:

- Terrorist offenders are classified according to the threat level they pose, as ascertained from the available data and the type of offence committed. This classification is taken into account when deciding which cells terrorist offenders should be placed in and what transport arrangements should be used.
- Leaders and other agitators are kept under observation in isolated cells with all necessary amenities (ventilation, light, etc.), in accordance with the international treaties on the physical and mental well-being of prisoners.

(e) Increasing the number of qualified staff working with prisoners

33. In addition to increasing the number of staff at penal institutions in line with the expansion in capacity achieved through the extension of existing prisons and the construction of new prisons, the Ministry of Justice is working to build capacities within the prison administration department in order to make it a motor for the promotion of a human rights culture. To that end, the Ministry has worked with OHCHR to hold training sessions in which some 1,600 prison officials have participated. The training included a general introduction to international human rights standards and covered the role played by employees in strengthening human rights in prisons and correctional facilities, in particular with regard to the rehabilitation and reintegration of prisoners while they serve their sentences.

34. A number of training courses have been held within the framework of the partnership agreement between the Ministry of Women's Affairs, Family and Children and the Ministry of Justice. The courses focused on promoting a human rights culture with regard to children and on preventing violence against children. In 2015 and 2016, more than 200 persons participated in the courses.

35. In 2016, the general programme of the human rights unit was updated to include the provision of basic training to all institutions.

(f) Ensuring the availability of medical services in all prison facilities

36. Health services are provided at all prison facilities. The Ministry of Justice is developing these services by improving the infrastructure available — such as the renovation and expansion of medical facilities at Burj Al-Amiri prison — and by providing training to personnel.

37. Ten full-time general practitioners and 57 medical assistants have been hired and three ambulances have been acquired. A medical testing centre has also been established at Mornaguia prison in cooperation with ICRC.

38. The Ministry of Justice has launched a number of programmes to improve health services at prisons:

- An agreement has been signed with the Military School of Health to provide second-level health care training to 30 nurses in April 2017, to be repeated in September 2017;
- Six full-time general practitioners, two dentists and seven technicians have been hired by the Ministry of Health and assigned to the Prisons and Rehabilitation Department;
- Under the agreement concluded with UNODC, work is due to start at four model prisons and correctional centres as part of a programme to provide medical, psychological and social counselling to drug addicts and to sufferers of acquired immune deficiency syndrome (AIDS), hepatitis and tuberculosis.

(g) Ensuring that solitary confinement is used only as a last resort and with the possibility of judicial review, in accordance with international standards

39. Work is under way to revise the 2002 Prisons Act to bring it into line with international standards.

40. Solitary confinement is currently used only in exceptional circumstances and in strict accordance with international standards, as a means of preventing terrorist offenders from influencing other prisoners.

Third: Recommendation of the Committee concerning transitional justice (paragraph 38 of the concluding observations)

41. The Truth and Dignity Commission prepares annual budget assessments, which are discussed by the Assembly of the Representatives of the People. The Ministry of Finance is responsible for providing the requested funds and authorizing the necessary credit.

42. The Commission receives and examines complaints and petitions concerning allegations of violations, in accordance with article 40 of Basic Law No. 53 of 24 December 2013, and refers all verified cases of serious human rights violations to the Public Prosecutor, in accordance with article 42 of the same Law. Article 8 provides that the Public Prosecutor must refer the cases to the judicial chambers established for that purpose in accordance with decree No. 2887 of 8 August 2014. The Commission is informed of any subsequent steps taken by the judicial authorities.

43. Article 40 of the Transitional Justice Act states that the Commission must work with the relevant agencies to take all appropriate measures to protect witnesses, victims and experts and all other persons who provide testimony — regardless of their involvement in the offence in question — by providing security guarantees, protecting them from attack and other crimes and maintaining their anonymity.

44. As regards transitional measures, the Government has provided temporary compensation to victims in need, in particular elderly persons, women, children, persons with disabilities or special needs, the sick, and vulnerable groups, until the relevant decisions and rulings on damages are issued under the framework of transitional justice (article 12 of the Transitional Justice Act).

45. In accordance with article 11 of the Transitional Justice Act, the State must provide sufficient reparations for damages in proportion to the severity of the violation and the situation of each victim, taking into account the possibilities available to the State at that time.

46. The Transitional Justice Act sets out clear standards for reparations, which cover financial and moral compensation, rehabilitation, apologies, restoration of rights and reintegration. Reparations may be claimed individually or collectively, in accordance with article 11.

47. The Act recognizes all victims without discrimination. A victim is defined as any person who suffers harm as a result of a violation committed under the terms of the Act, regardless of whether the claim is made individually, collectively or by a legal person. The definition also covers family members of a victim who have suffered harm as a result of their proximity to the victim in accordance with the provisions of public law, in addition to any person who has suffered damages while providing assistance to victims or attempting to protect victims against harm. The definition applies to all regions in which the people have been marginalized or systematically excluded.

48. In accordance with article 39 of the Transitional Justice Act, the Truth and Dignity Commission is the independent entity charged with instituting a comprehensive programme for individual and collective reparations for victims of violations. As such, it is responsible for:

- Acknowledging violations suffered by victims and making reparations to those victims, taking account of any earlier administrative or judicial decisions or steps taken on behalf of the victims;
- Upholding the necessary standards for the payment of compensation to victims;
- Determining methods for the payment of compensation, taking into consideration the estimates of compensation to be paid;
- Taking urgent temporary measures to identify and compensate victims.

49. Article 41 of the Transitional Justice Act establishes the Dignity and Rehabilitation Fund for Victims of Tyranny.

50. In accordance with article 40 of the Transitional Justice Act, the Truth and Dignity Commission receives complaints and petitions related to violations for a period of one year as of the start of its activities, which may be renewed for a maximum of six months.

51. Victims may therefore choose to bring their case before the Truth and Dignity Commission or before the judicial authorities, which pursue offenders and hear claims for damages in accordance with the Criminal Code. In that connection, article 1 of the Criminal Procedure Code provides that "any offence shall give rise to public proceedings having as their purpose the imposition of a penalty and, if an injury has been caused, to a civil suit with a view to obtaining compensation".